

STATE OF MICHIGAN
COURT OF APPEALS

CITIZENS COMMERCIAL & SAVINGS BANK,
Personal Representative of the Estate of BARBARA
H. MCGREGOR, Deceased,

Plaintiff- Appellant,

v

DELMER E. MATHEWS,

Defendant-Appellee.

UNPUBLISHED
January 25, 2000

No. 207703
Genesee Circuit Court
LC No. 96-050177 CZ

Before: White, P.J. and Markey and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1989 plaintiff's decedent Barbara McGregor (hereafter McGregor), then eighty-four years of age, transferred ownership of certain stock funds to herself and defendant, her nephew, as joint tenants with rights of survivorship. McGregor took this action in order to conceal the assets from her husband, with whom she had had marital difficulties. McGregor's financial advisors counseled her regarding the ramifications of joint ownership of the stock, and after her husband died in 1993, McGregor and defendant continued to hold the stock as joint tenants. Thereafter, McGregor received and paid taxes on the dividends from the stock. Defendant had physical custody of the stock certificates.

In August, 1996 McGregor filed suit seeking to have the court impose a constructive trust over the assets owned jointly with defendant, and to declare her to be the sole beneficiary of the trust and the trustee in charge of the trust assets. McGregor alleged that she did not intend to make a gift to defendant or to give him an equitable interest in the property by making him a joint owner. McGregor died three weeks after the complaint was filed,¹ and was not deposed in this case.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the uncontroverted evidence established that McGregor took action to make him a joint owner of the stock

with a full and complete understanding of the ramifications of her actions. The trial court granted the motion, finding that defendant's ownership interest, created via the joint tenancy, was irrevocable. *Albro v Allen*, 434 Mich 271; 454 NW2d 85 (1990).

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition for the reason that an issue of fact existed as to McGregor's intent when she transferred ownership of the stock to herself and defendant. We disagree and affirm.

For a gift to be valid, three elements must be satisfied: (1) the donor must possess the intent to transfer title gratuitously to the donee; (2) there must be actual or constructive delivery of the subject matter to the donee, unless the subject matter is already in the donee's possession; and (3) the donee must accept the gift. *Davidson v Bugbee*, 227 Mich App 264, 268; 575 NW2d 574 (1997). A gift *inter vivos* must be fully consummated during the life of the donor, and must invest ownership in the donee beyond the power of recall by the donor. *Osius v Dingell*, 375 Mich 605, 611; 134 NW2d 657 (1965). The uncontroverted evidence established that McGregor made a valid gift to defendant. McGregor's act of transferring ownership of the stock to herself and defendant was gratuitous and was done with a full understanding of the ramifications of joint ownership. Defendant was given physical possession of the stock certificates. The gift was beneficial; therefore, defendant's acceptance is presumed. *Osius, supra*. Plaintiff failed to set forth competent evidence demonstrating the existence of a genuine issue of fact regarding McGregor's intent at the time the transfer was made. MCR 2.116(G)(4). The granting of summary disposition in favor of defendant was proper.

Affirmed.

/s/ Helene N. White
/s/ Jane E. Markey
/s/ Kurtis T. Wilder

¹ Citizens Commercial & Savings Bank was named as the personal representative of the decedent's estate and by recent order of this Court, was substituted as plaintiff in this action.